

Office of the Attorney General
State of North Dakota

Opinion No. 86-28

Date Issued: September 25, 1986

Requested by: Micheal Deisz
Executive Director
Job Service North Dakota

--QUESTION PRESENTED--

Whether Job Service North Dakota has the power and authority to borrow and repay funds from sources other than the Title XII Federal Unemployment Fund.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Job Service North Dakota does not have the power and authority to borrow and repay funds from sources other than the Title XII Federal Unemployment Fund.

--ANALYSIS--

N.D. Const. Art. X, § 13 provides as follows:

Section 13. The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed sixty-five percent of its value; or upon real and personal property of state-owned utilities, enterprises, or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises, or industries in excess of ten million dollars.

No further indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest,

shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for the public defense in case of threatened hostilities.

(Emphasis supplied). Under this provision of the constitution, the state and its agencies may only incur indebtedness when that indebtedness is specifically authorized by the Legislature for a clearly defined purpose.

The Legislature has authorized the Governor to borrow funds on behalf of Job Service North Dakota from the Title XII Federal Unemployment Fund. N.D.C.C. § 52-04-21 provides as follows:

52-04-21. ADVANCES FROM FEDERAL UNEMPLOYMENT TRUST FUND. The governor is authorized to apply for advances to the state of North Dakota from the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified in title XII of the Social Security Act, as amended, in order to secure to this state the advantages available under the provisions of said title.

Advances from the federal unemployment trust fund which are interest-bearing shall have such interest cost assessed against and paid from the federal advance interest repayment fund.

Therefore, Job Service North Dakota, through the Governor, is specifically authorized by statute to borrow from the Title XII Federal Unemployment Fund. See also N.D.C.C. § 52-03-08.

The Legislature has not given Job Service North Dakota (or the Governor on behalf of Job Service North Dakota) any additional power or authority to borrow funds from any other sources. In the absence of such specific authorization, Job Service North Dakota does not have the power to borrow funds from other sources. Job Service North Dakota is given the general authority to administer the state's unemployment compensation law. N.D.C.C. § 52-02-02 provides as follows:

52-02-02. POWERS, DUTIES, ORGANIZATION, METHODS OF PROCEDURE OF BUREAU--SEAL. The bureau may adopt, amend, or rescind such rules and regulations, make such expenditures, require such reports, make such investigations, and take such other action as it deems

necessary or suitable in the administration of the North Dakota Unemployment Compensation Law. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of the North Dakota Unemployment Compensation Law, which the bureau shall prescribe. The bureau shall determine its own organization and methods of procedure in accordance with the provisions of the North Dakota Unemployment Compensation Law and shall have an official seal which shall be noticed judicially.

This statute does authorize Job Service North Dakota to take those actions it finds necessary to administer North Dakota's unemployment compensation law. However, N.D.C.C. § 52-02-02 does not contain any specific authorization for the bureau to incur indebtedness. Thus, under N.D. Const. Art. X, § 13, that statute cannot be interpreted as granting Job Service North Dakota any general authority to borrow funds.

Similarly, two other statutes contain general language possibly related to the authority of Job Service North Dakota to borrow funds from sources other than the Title XII Federal Unemployment Fund. However, these statutes, by themselves, do not authorize the agency to borrow funds.

One such statute, N.D.C.C. § 52-04-22, concerns the federal advance interest repayment fund. That fund was established for the purpose of paying interest due on federal advances to the state trust fund. N.D.C.C. § 52-04-22 provides: '[m]oneys in this fund may be used for the purpose of paying interest due on other than federal advances.' Yet, that statute itself contains no language granting Job Service North Dakota the power to borrow funds 'other than federal advances.'

A second statute, N.D.C.C. § 52-03-01, sets forth all of the sources of the funds in the unemployment compensation fund. The statute states that those sources include '[a]ll money received for the fund from any other source.' N.D.C.C. § 52-03-01(10). This statute also does not empower Job Service North Dakota to borrow funds from sources other than Title XII.

The general language of N.D.C.C. § 52-04-22 and § 52-03-01, like the general language of N.D.C.C. § 52-02-02, is insufficient to meet the constitutional requirement that a state agency's ability to incur indebtedness be specifically authorized by the Legislature for a clearly defined purpose.

No such authority can be found elsewhere in the North Dakota Century Code. N.D.C.C. § 54-27-23 does authorize the Office of Management and Budget, with the approval of the Emergency Commission, to issue certificates in anticipation of revenue, notes, or bonds to deal with cash flow problems state agencies may experience. However, N.D.C.C. § 54-27-23 clearly does not authorize Job Service North Dakota to borrow funds to repay Title XII advances or pay unemployment benefits or interest on the Title XII advances. N.D.C.C. § 54-27-23 applies only when the funds borrowed by the Office of Management and Budget will be repaid from the general fund. Moneys borrowed for the unemployment compensation fund or to repay Title XII advances or interest would not be repaid from the general fund. See N.D.C.C. Title 52.

Therefore, no provision of the North Dakota Century Code confers upon Job Service North Dakota (or the Governor on behalf of Job Service North Dakota) the power or authority to borrow funds from sources other than the Title XII Federal Unemployment Fund.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question is decided by the courts.

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